

NOTICE TO STATE AND LOCAL GOVERNMENT PUBLIC OFFICIALS

On November 13, 1985, the Fair Labor Standards Amendments of 1985 (Public Law 99-150) were enacted. These amendments change certain provisions of the Fair Labor Standards Act (FLSA) as they relate to employees of State and local governments. After the decision by the U.S. Supreme Court in Garcia v. San Antonio Metropolitan Transit Authority et al. (Garcia), 105 S. Ct. 1005 (February 19, 1985), many State and local government employers and representatives of their employees identified several areas in which they believed they would be adversely affected by immediate application of FLSA. This legislation responds to these concerns by amending certain FLSA provisions with respect to employees of State and local governments. The effective date of these amendments is April 15, 1986. The amendments are summarized below.

Compensatory Time Off

State and local governments are permitted to give their employees compensatory time off in lieu of immediate overtime pay in cash, at a rate of not less than one and one-half hours for each hour of overtime worked, but only pursuant to a collective bargaining agreement, or an agreement or understanding arrived at between the employer and employee before performance of the work. The regular practice of granting compensatory time off in lieu of overtime compensation in effect on April 15, 1986, shall be considered an agreement or understanding.

The maximum compensatory time which may be accrued by any affected employee shall be 480 hours (i.e., not more than 320 hours of actual overtime hours worked) for those engaged in a public safety, emergency response or seasonal activity, and 240 hours (i.e., not more than 160 hours of actual overtime hours worked) for all other employees for hours worked after April 15, 1986. An employee who has accrued the maximum number of compensatory hours shall be paid overtime compensation in cash for any additional overtime hours of work.

An employee shall be permitted to use accrued compensatory time within a reasonable period after it is requested if to do so would not unduly disrupt the operations of the employing public agency.

Payment for accrued compensatory time upon termination of employment shall be calculated at the average regular rate of pay for the final 3 years of employment, or the final regular rate received by the employee, whichever is the higher.

"Compensatory time" and "compensatory time off" are defined as hours when an employee is not working and which are paid for at the employee's regular rate of pay. These hours are not counted as hours worked in the week in which they are paid.

A collective bargaining agreement in effect on April 15, 1986, that permits compensatory time off in lieu of overtime pay remains in effect until it expires or is modified, except that the compensatory time off after April 15, 1986 shall be provided in accordance with provisions discussed above.

Multiple Job Situations

Employees of a State or local government agency who are employed in fire protection, law enforcement, or related activities may at their own option agree to a special detail to work for a separate or independent employer in such activities. The hours worked for the separate and independent employer (public or private) shall be excluded from hours worked for overtime pay purposes by the original employing agency. This provision shall apply even if the principal employer requires that only certain individuals may engage in the employment by the separate and independent employer and facilitates or affects the conditions of employment.

Employees of a State or local government agency may at their own option undertake employment for the same employer on an occasional or sporadic basis in a part-time job in a different capacity than their regular employment. The hours of work in the different job shall not be counted as hours worked for overtime pay purposes on the regular job.

Employees of State and local government agencies at their own option but with the approval of their employer may substitute during scheduled hours for other employees employed in the same capacity. In the case of such substitution, the hours involved are credited to the scheduled employee and not to the substitute employee. The employer need not maintain a record that the substitution has taken place.

Volunteers

Individuals who volunteer their services to State or local governments and receive no compensation, are excluded from the definition of "employee" and are thus excluded from coverage. They may be paid expenses, reasonable benefits, nominal fees, or a combination of these. However, an employee of a State or local government may not volunteer to his own agency services of the same type the employee is employed to perform.

An employee of a State or local government agency may volunteer services to any other State or local government agency, including agencies with which the employing agency has a mutual aid agreement.

Persons treated as volunteers by State or local government agencies prior to April 15, 1986, shall be considered volunteers under the FLSA until April 15, 1986.

No State or local government agency shall be liable for a minimum wage violation occurring prior to April 15, 1986, with respect to individuals which it deemed to be volunteers.

State and Local Government Legislative Employees

The Amendments exclude from the definition of "employee," and thus from coverage of FLSA, employees of the legislative body of a State, political subdivision of a State, or agency, except that employees of legislative libraries would continue to be covered.

Discrimination

A State or local government agency that discriminates against an employee because the employee asserted overtime coverage under FLSA after February 19, 1985, shall be held to have violated the anti-discrimination provisions of Section 15(a)(3) of FLSA.

Effective Date

The effective date of the Fair Labor Standards Amendments of 1985 is April 15, 1986.

Liability and Deferred Payment

No State or local government agency shall be liable under section 16 of FLSA for a violation of overtime pay or related recordkeeping provisions occurring prior to April 15, 1986, unless the affected employee would have been covered by FLSA under the Secretary of Labor's special enforcement policy on January 1, 1985, as published in section 775.3 of 29 CFR Part 775. (Thus, this provision for liability and deferred payment does not apply to employment in: (1) alcoholic beverage stores; (2) off-track betting corporations; (3) local mass transit systems; (4) generation and distribution of electric power; (5) provision of residential and commercial telephone and telegraphic communications; (6) production and sale of organic fertilizer as a by-product of sewage processing; (7) production, cultivation, growing or harvesting of agricultural commodities for sale to consumers; (8) repair and maintenance of boats and marine engines for the general public; and (9) the operation of a railroad.) In addition, governmental employers in territories or possessions of the United States shall not be liable for a minimum wage violation which occurred before April 15, 1986 with respect to their employees.

A State or local government may defer to August 1, 1986, the payment of monetary overtime pay due employees for hours worked after April 14, 1986.

For further information, please call your local office of the Department's Wage and Hour Division of the Employment Standards Administration.

U.S. Department of Labor

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